

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR

ORDER

Kan Singh

Vs. State of Rajasthan & Ors.

S.B.CR.MISC. PETITION NO.639/2006

DATE OF ORDER

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November 14, 2006

PRESENT

HON'BLE MR.JUSTICE H.R.PANWAR

Mr.Bheemkant Vyas, for the petitioner.
Mr.Ashok Upadhyaya, P.P.
Mr.S.S.Ladreacha, for non-petitioners.
Mr.D.D.Chitlangi, for non-petitioner No.4.

BY THE COURT:

This criminal misc. petition under section 482 Cr.P.C. is directed against the order dt. 2.4.2006 passed by the Additional District Magistrate (City), Bikaner (for short 'the Executive Magistrate' hereinafter), whereby on proceeding under section 133 Cr.P.C., the Executive Magistrate issued notice to the petitioner.

I have heard learned counsel for the parties.

It is contended by the learned counsel for the petitioner that there are provisions in Municipal Law for the way and, therefore, the proceeding under section 133 Cr.P.C. is not maintainable.

Sub-section (1) of section 133 Cr.P.C. provides that whenever a District Magistrate or a Sub-Divisional Magistrate or any other Executive Magistrate specifically empowered in this behalf by the State Government, on receiving the report of police officer or other information and on taking such evidence if any as he thinks fit, considers (a) that any unlawful obstruction or nuisance should be removed from any public place or from any way, river or channel which is or may be lawfully used by the public. Such Magistrate may make a conditional order requiring the person causing such obstruction or nuisance to remove the same.

In the instant case, from the allegation in the application filed by the non-petitioners before the Municipality seeking permission to construct a hotel, it appears that the petitioner is constructing a hotel in the name and style as Hotel Bhawani. While taking permission from the Municipality to raise construction, the petitioner gave an undertaking that while raising the construction of hotel, he would not obstruct the way.

Non-petitioners noticing that despite undertaking to the Municipality, the petitioner obstructed the way and, therefore, moved to Executive Magistrate for removal of the obstruction on the public way under section 133 and 142 Cr.P.C. The Executive Magistrate registered the case and issued the notice. It is for the petitioner to file a reply to the notice before the Executive Magistrate and disclose as to whether any obstruction or nuisance has been created by him or not. In the circumstances, therefore, it cannot be said that issuing a notice in the proceeding under section 133 Cr.P.C. would result in serious miscarriage of justice or abuse of process of the court.

The petition is, therefore, dismissed. The petitioner may file reply to the notice before the Executive Magistrate and any document including any order passed by a civil court with regard to the subject-matter of the dispute and the Executive Magistrate shall objectively consider and decide the matter.

[H.R.PANWAR],J.

m.asif/-